

SJ-EXHIBIT 12

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 CAUSE NO. 17-md-2804
5 MDL NO. 2804

6
7 IN RE: NATIONAL)
8 PRESCRIPTION OPIATE)
9 LITIGATION)
10)
11 THIS DOCUMENT RELATES TO:)
12 TRACK THREE CASES)

13 REMOTE VIDEO DEPOSITION OF
14 CARMEN A. CATIZONE, MS, RPh, DPh
15 VOLUME I

16 The deposition upon oral examination of
17 CARMEN A. CATIZONE, MS, RPh, DPh, a witness produced
18 and sworn before me, Amy Doman, Registered Merit
19 Reporter, Certified Realtime Reporter, Certified
20 Shorthand Reporter, Notary Public in and for the County
21 of Hamilton, State of Indiana, taken on behalf of the
22 Defendants, in Mount Pleasant, South Carolina,
23 scheduled to begin at 8:10 A.M., on Tuesday,
24 June 15, 2021, pursuant to the Federal Rules of Civil
25 Procedure.

1 BY MS. FUMETON:

2 Q Okay. And so at least from a policies and
3 procedures standpoint, if the VAWD is giving
4 accreditation, it is concluding that their policies
5 and procedures are compliant with the CSA, correct?

6 MR. ELSNER: Objection.

7 A Along the distribution lines, yes.

8 BY MS. FUMETON:

9 Q When you left the executive director position at
10 NABP in May of 2020, did you receive a type of
11 severance or retirement package?

12 A I was an employee of the association, and so I
13 received a pension and 401(k) like the other
14 employees did, yes.

15 Q And was that something you had already paid into?

16 A Yes.

17 Q Other than the compensation benefits that we've
18 already discussed, did you ever receive any other
19 remuneration from the NABP, any other benefits?

20 A Yes.

21 Q What are those?

22 A Whenever there was an increase or bonus provided to
23 me, I deposited that money into a deferred income
24 account so that I would not then take that money
25 for that year, and then at the end of my time with

1 not to fill the prescription?

2 A Yes, sir.

3 Q Would you agree with me that just because a
4 prescription flags under one of your 16 red flags,
5 that does not mean that it was written for an
6 illegitimate medical purpose?

7 A Yes, sir.

8 Q And would you agree with me that it also does not
9 mean that the drugs that were dispensed to fill
10 that prescription were diverted?

11 A Yes, sir.

12 Q And you have not made any effort in your -- if you
13 have, tell me. But as I understand it, you've not
14 made any effort to determine how many of the
15 prescriptions that flagged under your flags 1
16 through 16 were actually diverted?

17 MR. ELSNER: Objection.

18 A Not the individual numbers, sir, no.

19 BY MR. BUSH:

20 Q And you haven't made any effort to determine how
21 many of the prescriptions that flagged under your
22 16 red-flag methodologies were not written for a
23 legitimate medical purpose?

24 A Not individually, sir.

25 Q And you would agree with me, would you not, that

1 many of the prescriptions that flagged are likely
2 to have been written for a legitimate medical
3 purpose?

4 MR. ELSNER: Objection.

5 A No, sir.

6 BY MR. BUSH:

7 Q Do you think any of them were?

8 A Yes, sir.

9 Q And would you agree with me that many of the
10 prescriptions that have flagged in your red flags 1
11 through 16 were most likely not diverted to a
12 purpose other than not for which the prescription
13 was written?

14 A No, sir, I would not agree with that.

15 Q You would agree with me that some were?

16 A Yes, sir.

17 Q Can you tell me what your definition of diversion
18 is?

19 A The Controlled Substances Act was designed to
20 create a closed system of distribution for
21 controlled substances. Now, starting with the
22 manufacturer through the distributor, through the
23 prescriber, through the pharmacy, and ultimately to
24 the patient. Anything outside of that closed
25 system is what I would consider diversion because

1 said the same training that qualifies me to look at
2 a prescription and make a decision as to whether
3 that's appropriate therapy or not?

4 A Yes, sir. Earlier you asked me a question about
5 whether or not I had specialized training or went
6 to medical school. That specialized training that
7 all the defendant pharmacists have are the training
8 that qualifies pharmacists to be able to evaluate
9 prescriptions and conduct drug utilization review
10 in regard to the appropriateness of a medication.

11 Q But you at least agree with me that the pharmacist
12 that's presented with a prescription has less
13 information about the patient's health and health
14 history than does the doctor who wrote that
15 prescription? We can agree there, right?

16 A Yes, sir.

17 Q Okay. Now, all of the pharmacists who practice in
18 the state of Ohio, they get their licensure from
19 the Ohio State Board of Pharmacy, right?

20 A Yes, sir.

21 Q And the -- well, let me withdraw that.

22 As the licensing body for pharmacists in the
23 state of Ohio, is the Ohio Board of Pharmacy
24 responsible for ensuring that pharmacists that it
25 licenses comply with the relevant laws and

1 regulations?

2 A Yes, sir.

3 Q Is the Ohio Board of Pharmacy responsible for
4 disciplining pharmacists who fail to comply with
5 the relevant laws and regulations?

6 A Yes, sir.

7 Q What I'm getting at, in other words, the Ohio Board
8 of Pharmacy, they don't just hand out licenses to
9 pharmacists who pass the exam when they graduate
10 pharmacy school and then pay them no more mind,
11 right? That's not how it works?

12 MR. ELSNER: Objection.

13 A Correct, sir.

14 BY MR. SWANSON:

15 Q What is the Ohio State Board of Pharmacy do to
16 ensure that the pharmacists that it licenses are
17 qualified to maintain their license?

18 A The requirement for continuing education is
19 something that the Ohio Board of Pharmacy monitors,
20 as well as any complaints they may receive about
21 that pharmacist, and as part of their routine
22 inspections or monitoring of pharmacies, if they
23 detect a problem or suspect a problem, the Ohio
24 Board of Pharmacy uses that as another evaluation
25 tool.

1 Q Got it. So I guess I didn't ask the relevant
2 question first. The license that a pharmacist gets
3 in Ohio, that needs to be periodically renewed,
4 right?

5 A Yes, sir.

6 Q Okay. And what you were just describing, I guess,
7 are kind of the steps that the State Board of
8 Pharmacy takes to ensure that renewal of a pharmacy
9 license is proper, right?

10 A I think the question that you asked me is what does
11 the Ohio Board of Pharmacy do to make sure that
12 that pharmacist remains competent and current.

13 So the answer to that is yes, as well as the
14 second question you asked me.

15 Q Understood.

16 So you mentioned that the State Board of
17 Pharmacy, they have investigators who go out and
18 visit pharmacies in their jurisdiction, right?

19 A Yes, sir.

20 Q And they'll conduct inspections of those pharmacies
21 to make sure they are compliant, right?

22 A Yes, sir.

23 Q And they can interview the pharmacist to make sure
24 the pharmacist is complying with the appropriate
25 state and federal laws and regulations, right?

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1 A Yes, sir.

2 Q They provide continuing pharmacy education programs
3 so the pharmacists can make sure they are updated
4 and kept up-to-date on important issues, legal and
5 otherwise, right?

6 A Not exactly, sir. The Ohio Board of Pharmacy
7 requires continuing education. They may provide
8 some sort of CE, but the bulk of CE is provided by
9 approved continuing education providers, and they
10 are approved by the American Council on
11 Pharmaceutical Education.

12 Q Right. I guess what I'm saying is the State Board
13 of Pharmacy, they mandate that the pharmacists
14 comply and complete continuing education courses,
15 right?

16 A Correct. But you'd asked me before you if they
17 provide CEs, and that's what I was clarifying.

18 Q Got it. So they don't provide it, but they mandate
19 that you do it?

20 A They may provide some classes, sir.

21 Q And do they -- do they have other educational tools
22 that they can provide to pharmacists to make sure
23 that pharmacists are able to keep up to speed on
24 important laws and issues?

25 MR. ELSNER: Objection.

1 A Yes. A newsletter program that you referenced
2 earlier is one way, as well as any correspondence
3 or contact with a pharmacist through email or
4 mailings to alert them of changes or important
5 things in Ohio.

6 BY MR. SWANSON:

7 Q And I noticed as I was looking at your materials
8 reviewed, I didn't -- well, let me take a step
9 back.

10 Were you aware that in this case, several
11 Ohio -- State of Ohio Board of Pharmacy
12 investigators provided depositions in this case?

13 Did you know that?

14 A I'm sorry. I did not.

15 Q And I guess you did know that one of the things
16 that the State Board of Pharmacy does is they go
17 out and they conduct inspections of pharmacies in
18 their jurisdiction, right?

19 A Yes, sir.

20 Q And when they do those inspections, they complete
21 reports about their findings from those
22 inspections.

23 You knew that, right?

24 A The standard operating procedure for all boards of
25 pharmacy so yes, sir.

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1 Q And I didn't see it in your materials reviewed that
2 you'd looked at any inspection reports for any of
3 the retail chain pharmacies in this case.

4 Is that true you didn't look at any of those?

5 A Yes, sir. I'm not sure I would have access to
6 those if they are legally able to provide them to
7 me, but I did not review them.

8 Q Well, it is something that you knew existed from
9 your time at the NABP. Didn't you ask the lawyers
10 what the Ohio State Board of Pharmacy had to say
11 about the retail chain pharmacies?

12 MR. ELSNER: Objection.

13 A Based upon my experience, many of the states
14 prohibit or will not release the inspection
15 reports, and so I did not ask for that. I did not
16 think it was available, sir.

17 BY MR. SWANSON:

18 Q Got it. Okay.

19 Returning to your report -- and bear with me.
20 I have to find what I'm quoting here.

21 On page 7, continuing on to page 8, you say
22 pharmacists -- so we're talking about the standard
23 of care. You say "Pharmacists are not mere sellers
24 of tablets and capsules prescribed by doctors.
25 They are licensed professionals with independent

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1 duties and obligations which have evolved over the
2 past century. Those practices and their standard
3 of care are reflected in national and state laws
4 and regulations."

5 I just want to pause there, okay.

6 In your section on the standard of care, you
7 cite to the Controlled Substances Act, three
8 provisions of the Controlled Substances Act and the
9 Ohio Administrative Code.

10 Do you see that?

11 A On the same page, sir? I don't see a footnote.

12 Are you saying --

13 Q Well, yeah, that was my question. I mean, you have
14 450 footnotes in your report, but when it comes to
15 the section on the standard of care, you don't cite
16 a whole lot of documents, statutes, regulations,
17 etcetera, that you're relying on.

18 Would you agree with that?

19 MR. ELSNER: Objection.

20 A There are so many standards available that I could
21 not list them all, and that's why they are not
22 included.

23 BY MR. SWANSON:

24 Q Well, I want to focus not on standards. I want to
25 focus on federal and state laws. If you look at

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1 the last paragraph on that page, on page 8, you
2 cite to three separate provisions of the Controlled
3 Substances Act.

4 Do you see that?

5 A Yes, sir.

6 Q And then you cite to a single provision of the Ohio
7 Administrative Code.

8 Do you see that?

9 A Yes, sir.

10 Q So beginning with the Controlled Substances Act,
11 are there any other federal laws or regulations or
12 sections of the CSA that you rely on for your
13 opinions regarding your definition of the standard
14 of care?

15 MR. ELSNER: Objection.

16 A Yes, sir.

17 BY MR. SWANSON:

18 Q Okay. Can you tell me what they are?

19 A I'd have to go through the document because in this
20 first section, I simply provide a broad overview of
21 what those documents or citations were. And then
22 as those specific citations pertain to a topic or
23 issue of my opinion, they are further cited,
24 including DEA actions or what parts of 1306.04 or
25 1306.06 would be relevant to that particular

1 section, sir.

2 Q I understand. But I want to know -- well, let me
3 just ask it more broadly, then.

4 Have you in your report identified every
5 provision of the CSA that you believe is relevant
6 to your opinion in this case?

7 MR. ELSNER: Objection.

8 A No, sir.

9 BY MR. SWANSON:

10 Q You have not?

11 A No, sir.

12 Q Why not?

13 MR. ELSNER: Objection.

14 A Based upon the reports and the narrative and the
15 explanation of how it applied, I didn't feel it was
16 necessary to cite every single paragraph, sentence,
17 or provision. Instead, quoted the necessary ones
18 but assumed that as a total document, the CSA was
19 applicable and that it would be applicable in this
20 situation in the context of the report and what the
21 activities of the defendants in the case -- the
22 assumption was made that the CSA, the entire
23 document, the entire provision was applicable.

24 (Stenographer requested clarification.)

25 Q At the bottom of page 8, you state -- and I'll

1 start reading. Tell me if you don't see where I
2 am. You say: "For a controlled substance
3 prescription to be valid, a pharmacist is obligated
4 to determine whether the prescription was issued
5 for a legitimate medical purpose."

6 Do you see that?

7 A Yes, sir.

8 Q Okay. And then you cite the CSA at 1306.04(a),
9 right.

10 A Yes, sir.

11 Q And that's a corresponding responsibility
12 provision?

13 MR. ELSNER: Objection.

14 A Yes, sir.

15 BY MR. SWANSON:

16 Q Now, earlier in your testimony in response to a
17 question -- I can't recall who posed it -- you
18 testified that a primary requirement -- those were
19 your words -- primary requirement of a pharmacist's
20 corresponding responsibility is documenting red
21 flags or resolution of red flags.

22 Do you recall that testimony?

23 A Yes, sir.

24 Q If I wanted to find where that specific requirement
25 exists in the Controlled Substances Act, where

1 would you point me?

2 A I would point you to two places, sir. One would be
3 the general provision of 1306.04. And then I would
4 point to clarification of that provision that was
5 provided in the Hills Pharmacy case in Superior I
6 and II, in which the ALJ, the administrative law
7 judge or the findings in that case stated very
8 specifically that documentation was the standard of
9 care and something that would be required.

10 Q Okay. So let's start. You said you would point me
11 to 1306.04(a). And I believe if you turn to
12 page 25 of your report, you have -- you've quoted
13 that provision. So why don't you turn to 25.

14 Are you there?

15 A Yes, sir.

16 Q Okay. And you can see in the second paragraph
17 under the section on "Corresponding
18 Responsibility," you've quoted 1306.04?

19 A Yes, sir.

20 Q And can you show me where in that provision it
21 discusses what you call the requirement of
22 documenting resolution of red flags?

23 A Sure. Based upon my experience and knowledge in
24 this area, that first sentence: "The
25 practitioner's responsible for the proper

1 prescribing and dispensing of controlled
2 substances." My interpretation based upon my
3 experience and all of the matters I've been
4 involved with on this issue, the proper dispensing
5 of controlled substances involves documentation as
6 a standard of care and something that's been
7 spelled out or explained more clearly by the DEA in
8 other actions.

9 Q All right. So let's start with the Controlled
10 Substances Act. I take it you can't identify any
11 provision in the Controlled Substances Act that
12 specifically requires a pharmacist to document the
13 resolution of red flags, true?

14 MR. ELSNER: Objection.

15 A No, sir. The provision I just read is basis for me
16 to make that statement and opinion.

17 BY MR. SWANSON:

18 Q Well, you would agree with me that there's nothing
19 on the face of that language that says anything
20 about documenting red flags or resolution of red
21 flags.

22 You would at least agree with that, right?

23 A No, sir. On the face, the proper dispensing says
24 to me as the pharmacist documentation included.

25 Q All right. Well, then let me just ask. Is there

1 anywhere other than -- anywhere other than what
2 you've just stated where the Controlled Substances
3 Act in the Act itself clarifies or elucidates what
4 it means when it says proper prescribing, that it
5 must include documentation of red flags?

6 A The cases that I cited are very clear and very
7 explicit in clarifying that requirement;
8 Hills Pharmacy and Superior I and II.

9 Q And what year were those?

10 A I believe -- I can't recall, but I'd have to look
11 those up, sir.

12 Q Okay. And are they cited in your report? I was
13 just doing a search.

14 A They are -- I think they are one of the documents
15 as well. I would have to check as well.

16 Q Okay. Other than the language about proper
17 prescribing, is there anywhere else in the
18 Controlled Substances Act that you would point me
19 to that you claim makes clear that documentation of
20 the resolution of red flags is a requirement under
21 the CSA? Anywhere else?

22 A Sections I gave you and the citations are very
23 clear, and that's what I base it on. I don't see
24 any need for anywhere else for it to be mentioned.
25 It's very clear and very explicit.

1 Q Well, I guess you'd agree with me there's nothing
2 else that stopped the DEA from saying, you know
3 what, we're having these cases pop up where
4 pharmacists aren't documenting a resolution of red
5 flags. Maybe we should be more clear in the
6 statute about what's required.

7 That's something the DEA could have done,
8 right?

9 MR. ELSNER: Objection.

10 A Outside of my scope, sir.

11 BY MR. SWANSON:

12 Q What about -- can you point me to any Ohio State
13 law that specifically requires a pharmacist to
14 document resolution of red flags?

15 A I don't have the laws here, but I believe if you
16 want me to research that, I would be willing to do
17 so to determine if that's there or not.

18 Q Well, I'm trying to figure out the basis for your
19 opinion. Okay? And what you've opined and you say
20 in your report is that documentation of the
21 resolution of red flags is required by the
22 Controlled Substances Act, right?

23 A Yes, sir.

24 Q Is it also required by Ohio State law?

25 A Yes, sir.

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23 County of Hamilton, State of Indiana, taken on behalf
24 of the Defendants, in Mount Pleasant, South Carolina,
25 scheduled to begin at 8:00 a.m., on Wednesday,
 June 16, 2021, pursuant to the Federal Rules of
 Civil Procedure.

1 level; even though I can't identify which specific
2 prescriptions were diverted.

3 BY MR. SWANSON:

4 Q Okay. You can't tell me what individual
5 prescriptions were, in your view, illegitimate.
6 What percentage of those 37,066 prescriptions were
7 written for an illegitimate reason?

8 MR. ELSNER: Objection.

9 A The best way I can qualify that and give you an
10 answer, sir, is a significant number based upon the
11 total of opioids that were dispensed and based on
12 the resulting deaths in overdoses. Beyond that, I
13 can't give you anything more than "significant" and
14 I can't qualify it beyond "significant."

15 BY MR. SWANSON:

16 Q So you can't tell me if it's 10 percent or
17 20 percent or 30 percent, you can't tell me that,
18 can you, sir?

19 A I can if you provide the documentation that whether
20 or not those red flags were resolved. That would
21 allow me to give you the percentage versus the
22 aggregate totals, the deaths, and the supply of
23 opioids in those two counties.

24 Q But I have you in front of me today for
25 questioning. So sitting there in your chair today,

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1 you can't tell me what percentage of those 37,066
2 prescriptions you claimed were written for an
3 illegitimate reason, true?

4 MR. ELSNER: Objection.

5 A My answer is significant and significant would be
6 far greater than 10, 20, or 30 percent. Probably
7 more in the range of between 70 and 80 or
8 90 percent, sir.

9 BY MR. SWANSON:

10 Q Oh, so your opinion -- your opinion is that 70 to
11 90 percent of those 37,066 prescriptions were
12 written for an illegitimate reason?

13 A No, sir. You asked me to define just sitting in
14 the chair today what I thought would be a
15 significant number. And to me, a significant
16 number is somewhere to 70, 80 percent. Again,
17 lacking the documentation, I cannot quantify
18 whether or not those 37,000 prescriptions fell into
19 that category. But if you ask me what's the
20 difference between significant and others, for me a
21 significant number of prescriptions would be 70,
22 80 percent if I could make that determination, sir.

23 Q So a significant quantity of controlled substances
24 at 70 to 80 percent to you?

25 MR. ELSNER: Objection.

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1 A A significant number versus not a significant
2 number, sir.

3 BY MR. SWANSON:

4 Q Okay. 70 to 80 percent is what you qualify as
5 significant?

6 A Yes, sir.

7 MR. ELSNER: Objection.

8 BY MR. SWANSON:

9 Q So let's turn back to page 4. I want to read the
10 second sentence of your opinion again.

11 "The subsequent result of the failure to
12 provide such data, information, and tools was a
13 diversion of significant quantities of controlled
14 substances particularly opioids, outside of the
15 closed distribution and dispensing system for
16 controlled substances." Right?

17 A Yes, sir.

18 Q So if I understand your testimony, it is your view
19 that 70 to 90 percent of the medications that were
20 dispensed by the retail chain pharmacies were
21 diverted outside of the closed distribution and
22 dispensing system for controlled substances?

23 MR. ELSNER: Objection.

24 BY MR. SWANSON:

25 Q Right?

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1 A No, sir.

2 Q Okay. Where is my disconnect there?

3 A The disconnect is, I've said that a significant
4 number of prescriptions were diverted outside of
5 the system. But absent patient notes and other
6 documentation, I couldn't qualify or quantify what
7 significant meant. And defining significant as a
8 general term, that term for me means between 70 and
9 90 percent. If I had the documentation, I would be
10 able then to make a determination beyond how many
11 patients died in Lake and Trumbull County, and how
12 many opiates were distributed per person in opiate
13 [sic] county that, to me, supports "significant"
14 and would help me quantify that beyond just the
15 term "significant."

16 Q Sitting here today, can you do anything other than
17 speculate as to what percentage of the 37,066
18 prescriptions that hit on flag 2 for Walgreens were
19 for an illegitimate medical purpose?

20 MR. ELSNER: Objection.

21 A Again, it's not a speculation, sir. It's based on
22 the data, the number of opioids that were
23 distributed in those counties, the number of
24 overdoses and deaths indicate to me factually that
25 there was a significant diversion of prescriptions.

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1 BY MR. GISLESON:

2 Q Would you expect that some chain pharmacy stores in
3 Lake and Trumbull County have more patients than
4 other stores?

5 A Yes, sir.

6 Q Did you do anything to evaluate the demographics of
7 the patients served by each chain pharmacy store in
8 Lake and Trumbull County?

9 A No, sir.

10 Q Do you agree that the patient demographics may vary
11 from store to store, depending on the local
12 community?

13 A I would agree the demographics would vary, but the
14 opioid epidemic cuts across all demographic factors
15 and affects equal -- the populations equally. So
16 yes and no, sir.

17 Q As part of your analysis in this case, did you do a
18 specific investigation of the dispensing practices
19 of any particular pharmacy?

20 MR. ELSNER: Objection.

21 A Again, Mr. Gisleson, by dispensing practices, can
22 you just help me understand what you mean by that?

23 BY MR. GISLESON:

24 Q Sure.

25 Did you evaluate the percentage of controlled

1 versus noncontrolled prescriptions dispensed by a
2 particular pharmacy store in Lake or Trumbull
3 County?

4 MR. ELSNER: Objection.

5 A No, sir.

6 BY MR. GISLESON:

7 Q Did you evaluate the prescribing -- strike that.
8 Did you evaluate the dispensing practices of
9 any particular pharmacist in either Lake or
10 Trumbull County?

11 A No, sir.

12 Q Did you review any patient medical records for any
13 of the prescriptions that you flagged?

14 A No, sir.

15 Q Did you speak with any pharmacists in Ohio who
16 worked for one of the chain pharmacy defendants?

17 A No, sir, but I read the depositions of the
18 pharmacists who practiced in Ohio and supervised
19 pharmacists in Ohio.

20 Q Did you speak with anyone from the Ohio board of
21 pharmacy concerning dispensing practices in Lake or
22 Trumbull County as part of the work you did in this
23 case?

24 A No, sir.

25 Q During the time that you were preparing your report

1 looked at did not identify the pharmacist.

2 BY MR. GISLESON:

3 Q Did you report to anyone with the Ohio Board of
4 Pharmacy, that in your view, a large number of
5 pharmacists at CVS, Rite Aid, Walgreens, Walmart,
6 and Giant Eagle violated their corresponding
7 responsibility based on your review of aggregate
8 data?

9 MR. ELSNER: Objection.

10 A Knowing the workings of the state boards of
11 pharmacy, sir, the answer is no, because I'm not
12 sure whether or not the Ohio Board of Pharmacy took
13 action against these pharmacists or has them under
14 investigation. And I defer to the Ohio Board of
15 Pharmacy.

16 If I'm presented with information to that
17 extent, then it would be my responsibility to
18 report those pharmacists and those companies to the
19 Ohio Board of Pharmacy.

20 BY MR. GISLESON:

21 Q The Ohio Board of Pharmacy does inspections of
22 pharmacies in Lake and Trumbull County, correct?

23 A Yes, sir.

24 Q And they have the ability as part of those
25 inspections to look at a pharmacy's dispensing

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1 system, correct?

2 MR. ELSNER: Objection.

3 A Yes, sir.

4 BY MR. GISLESON:

5 Q In fact, isn't it true that the Ohio Board of
6 Pharmacy must approve any dispensing system used by
7 a pharmacy in Ohio?

8 MR. ELSNER: Objection.

9 A I believe that was a requirement at one time. I'm
10 not sure if it still is, but yes, sir.

11 BY MR. GISLESON:

12 Q As part of your role as executive director of the
13 NABP, did the NABP at any time ever instruct the
14 Ohio Board of Pharmacy or advise the Ohio Board of
15 Pharmacy that it should review a pharmacy's
16 dispensing system to determine whether it analyzes
17 data to identify patterns of diversion?

18 MR. ELSNER: Objection.

19 A We're talking about different systems here, sir.
20 So if I can clarify, in a pharmacy, there are
21 numerous systems that the pharmacist has available.
22 There's a dispensing system that may focus on
23 processing a prescription and adjudicating the
24 claim. And then there's a DUR process, patient
25 profile process, and other patient information.

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1 in fact, the defendants -- some of the defendants
2 in this case actually use NARxCHECK as an algorithm
3 to help detect red flags and help detect diversion
4 as well.

5 Q Any other formulas or methodologies you can
6 identify?

7 A Not specifically beyond NARxCHECK, sir.

8 Q Did you do any investigation, whether pharmacies
9 who the counties didn't sue, were filling
10 prescriptions for opioid medications without a
11 legitimate medical purpose?

12 A The scope of the lawsuit was outside of my
13 expertise. I was simply asked to look at
14 corresponding responsibility red flags. How the
15 lawyers handled that and proceeded, I had no
16 information, access, or input into that, sir.

17 Q Did you have any understanding as to how many
18 opioid pills pharmacies other than the chain
19 pharmacies in this case dispensed between 2006 and
20 2020?

21 MR. ELSNER: Objection.

22 A In Ohio or nationwide? The answer --

23 BY MR. GISLESON:

24 Q I'm sorry, Lake and Trumbull Counties.

25 MR. ELSNER: Objection.

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1 A No, sir.

2 BY MR. GISLESON:

3 Q Do you know whether any opioid medications were
4 illegally being sold in Lake and Trumbull Counties?

5 MR. ELSNER: Objection.

6 A My scope was to look at the red flags corresponding
7 responsibility. I did not look at that factor,
8 sir.

9 BY MR. GISLESON:

10 Q Now, you say the dispensing data should have been
11 reviewed by each chain pharmacy to identify
12 patterns of diversion. Did you identify patterns
13 of diversion in this case based on your review of
14 the aggregate dispensing data?

15 MR. ELSNER: Objection.

16 A I identified red flags that indicated the potential
17 for diversion based on the aggregate data, sir.

18 Q Right. But you reviewed dispensing data. Based on
19 your review of that dispensing data, did you
20 identify any patterns of diversion?

21 MR. ELSNER: Objection.

22 A For the sample of dispensing data provided to me by
23 each of the defendants, yes.

24 BY MR. GISLESON:

25 Q What was the pattern?

1 to clear a red flag because that pharmacist was
2 under time pressure?

3 MR. ELSNER: Objection.

4 A I can't identify individual prescriptions but,
5 again, my report talks about the impact that had
6 based on the aggregate data.

7 BY MR. GISLESON:

8 Q Is it true that when the Ohio Board of Pharmacy
9 does an inspection of a pharmacy in Lake or
10 Trumbull County, that one of the issues that's
11 evaluated is staffing levels?

12 A I don't know if that's restricted to just Lake and
13 Trumbull County, sir. I think it's a metric that
14 they look at all pharmacies.

15 Q All pharmacies throughout Ohio?

16 A I believe so, sir.

17 Q Do you also understand that the Ohio Board of
18 Pharmacy, when doing an inspection, also evaluates
19 whether improper dispensing occurred?

20 A I'm not specifically aware, but believe that would
21 be one of the tenets, again, that the board of
22 pharmacy would look at.

23 Q Does the board of pharmacy also look at whether
24 pharmacists for a particular pharmacy have access
25 to OARRS to request reports when needed?

1 A I believe in 2011 and then in 2015, when OARRS
2 became mandatory first for certain drugs, and then
3 for certain drugs with red flags, and then for
4 certain drugs identified by the board of pharmacy,
5 since that was a mandate and a requirement that the
6 Ohio Board of Pharmacy would have looked for that,
7 sir.

8 Q When was the first time that NABP advised the Ohio
9 Board of Pharmacy that it should be mandatory for
10 pharmacists in Ohio to check OARRS with respect to
11 every single prescription for opioid medications
12 that are presented to the pharmacist?

13 MR. ELSNER: Objection.

14 A NABP made that recommendation to all states beyond
15 Ohio that the PDMP should be utilized for all
16 controlled substances prior to dispensing, and that
17 prescribers should also be mandated to check the
18 PDMP. And that might have been right at the
19 beginning of PDMP's -- when they were first
20 initiated, but I can't recall the specific dates,
21 sir.

22 BY MR. GISLESON:

23 Q So was that sometime around 2011?

24 A Again, it was early on in the PDMPs. I'm not sure
25 if it was 2010, 2011 or so.